

1 ASCENSION LAW GROUP
2 PAMELA TSAO (266734)
3 17802 IRVINE BLVD
4 SUITE 117
5 TUSTIN, CA 92780
6 PH: 714.783.4220
7 FAX: 888.505.1033
8 Pamela.Tsao@ascensionlawgroup.com
9 Attorneys for Plaintiff JOHN HO
10

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13

14 JOHN HO, an individual

15 Plaintiff,

16 vs.

17 QUARTZ HILL, LLC, a limited liability
18 company;

19 Defendant.
20
21
22
23
24
25
26
27
28

Case No.: 8:17-cv-00551

COMPLAINT FOR

**(1) VIOLATION OF THE UNRUH
CIVIL RIGHTS ACT
(CALIFORNIA CIVIL CODE
§§ 51, 52);**

**(2) VIOLATIONS OF THE
AMERICANS WITH
DISABILITIES ACT OF 1990**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I.
SUMMARY

1. This is a civil rights action by plaintiff John Ho (“Plaintiff”) for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex located at: 14024 MAGNOLIA ST, WESTMINSTER, CA 92683-4736 (APN: 098-101-13) (the “Property”). Plaintiff lives nearby and frequents the area several times a month for dining and entertainment purposes.

2. Plaintiff seeks damages, injunctive and declaratory relief, attorney’s fees and costs pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101, et seq.) and related California statutes¹ against defendant, the owner of the Property QUARTZ HILL, LLC, a limited liability company (“Defendant”).

II.
JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law – arising from the same nucleus of operative facts – is predicated on 28 U.S.C § 1367.

5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III.
VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Central District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

IV.
PARTIES

¹ Plaintiff is not currently asserting a cause of action under California Civil Code § 55, but may amend his complaint at a later time upon discovery of facts which give rise to such a claim.

1 disabilities.

- 2 c. Accessible parking spaces are not accompanied with properly configured
3 access aisles. The access aisle and/or accessible parking spaces have
4 slopes and cross slopes that exceed 2.0%, including but not limited to
5 ramps that protrude into access aisles creating excessive sloping.
6 Without a level parking space, it becomes difficult for Plaintiff to
7 unload/transfer from his vehicle as his wheelchair rolls.
8 d. Pathways and walkways are too narrow and or sloped. For example,
9 walk ways are blocked by a number of display items narrowing the
10 pathways such that Plaintiff cannot safely travel from each store in his
11 wheelchair.
12 e. There are no accessible pathways connecting the various buildings on the
13 Property. Without an accessible pathway it makes it difficult for Plaintiff
14 to safely travel from one building to the other. Because of Plaintiff's use
15 of a wheelchair, he is often traveling at a lower height and thus cannot be
16 easily seen by moving cars. When there are no accessible pathways
17 connecting buildings on a site Plaintiff risks the likelihood of being hit by
18 a moving car.
19 f. On information and belief, there are an insufficient number of spaces
20 designated as accessible. This makes it difficult for Plaintiff to find
21 parking.

22 **11.** These barriers to access are listed without prejudice to plaintiff citing
23 additional barriers to access after inspection by plaintiff's access consultant, per the 9th
24 Circuits standing standards under *Doran v. 7-Eleven, Inc.* 524 F.3d 1034 (9th Cir.
25 2008). These barriers prevented Plaintiff from enjoying full and equal access to the
26 Property.

27 **12.** Plaintiff was deterred from visiting the Property as a result of the
28 accessible barriers he encountered. He continues to be deterred from visiting the

1 equal accommodations, advantages, facilities, privileges, or services
2 in all business establishments of every kind whatsoever. Cal. Civ.
3 Code § 51(b).

4 **17.** California Civil Code § 52 provides that the discrimination by Defendant
5 against Plaintiff on the basis of his disabilities constitutes a violation of the anti-
6 discrimination provisions of §§ 51 and 52.

7 **18.** Defendant's discrimination constitutes a separate and distinct violation of
8 California Civil Code § 52 which provides that:

9 Whoever denies, aids or incites a denial, or makes any discrimination
10 or distinction contrary to section 51, 51.5 or 51.6 is liable for each and
11 every offense for the actual damages, and any amount that may be
12 determined by a jury, or a court sitting without a jury, up to a
13 maximum of three times the amount of actual damage but in no case
14 less than four thousand dollars (\$4,000) and any attorney's fees that
15 may be determined by the court in addition thereto, suffered by any
16 person denied the rights provided in Section 51, 51.5 or 51.6.

17 **19.** Any violation of the Americans with Disabilities Act of 1990 (as pled in
18 the Third Cause of Action) constitutes a violation of California Civil Code § 51(f)
19 thus independently justifying an award of damages and injunctive relief pursuant to
20 California law. Per § 51(f), "[a] violation of the right of any individual under the
21 Americans with Disabilities Act of 1990 ... shall also constitute a violation of this
22 section."

23 **20.** In addition to the occurrence in June 12, 2015, Plaintiff is entitled to
24 \$4,000.00 in statutory damages for each additional occurrence of discrimination under
25 California Civil Code § 52. Plaintiff continues to be deterred from visiting the
26 Property and thus is entitled to an additional \$4,000.00 in statutory damages for each
27 additional instance of deterrence or discrimination which occurs from the date of this
28 complaint until a final judgment is rendered in this action.

1 **21.** The actions and omissions of Defendant as herein alleged constitute a
 2 denial of access to and use of the described public facilities by physically disabled
 3 persons within the meaning of California Civil Code §§ 51 and 52. As a proximate
 4 result of Defendant's action and omissions Defendant has discriminated against
 5 plaintiffs in a violation of Civil Code §§ 51 and 51.

6 **VII.**

7 **SECOND CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH** 8 **DISABILITIES ACT OF 1990 (42 USC §§ 12101 *et seq.*)**

9 **22.** Plaintiff incorporates the allegations contained in paragraphs 1 through
 10 20 for this claim and incorporates them herein.

11 **23.** As part of the Americans with Disabilities Act of 1990 ("ADA"),
 12 Congress passed "Title III – Public Accommodations and Services Operated by
 13 Private Entities." 42 U.S.C. § 12181 *et seq.* The Property is one of the "private
 14 entities" which are considered "public accommodations" for purposes of this title,
 15 which includes any "restaurant, bar, or other sales or rental establishment serving food
 16 or drink." § 301(7)(B).

17 **24.** The ADA states that "[n]o individual shall be discriminated against on
 18 the basis of disability in the full and equal enjoyment of the goods, services, facilities,
 19 privileges, advantages, or accommodations of any place of public accommodation by
 20 any person who owns, leases, or leases to, or operates a place of public
 21 accommodation." 42 U.S.C. § 12182.

22 **25.** The acts and omissions of Defendant set forth herein were in violation of
 23 Plaintiff's rights under the ADA and the regulations promulgated thereunder, 28 CFR
 24 Part 36 *et seq.*

25 **26.** On information and belief, Plaintiff alleges the Property was constructed
 26 after 1992.

27 **27.** On information and belief, Plaintiff alleges that the removal of each of
 28 the barriers complained of by Plaintiff as hereinabove alleged, were at all times herein

1 mentioned "readily achievable" under the standards §§ 301 and 302 of the ADA. As
2 noted hereinabove, removal of each and every one of the architectural barriers
3 complained of herein were also required under California law. Further, on information
4 and belief, alterations, structural repairs or additions since January 26, 1993 have also
5 independently triggered requirements for removal of barriers to access for disabled
6 persons per § 303 of the ADA. In the event that removal of any barrier is found to be
7 "not readily achievable," Defendant still violated the ADA, per § 302(b)(2)(A)(v) by
8 failing to provide all goods, services, privileges, advantages and accommodations
9 through alternative methods that were readily achievable.

10 **28.** On information and belief, as of the date of Plaintiff's encounter at the
11 Property and as of the filing of this Complaint, the Defendant has denied and continue
12 to deny full and equal access to Plaintiff and to other disabled persons, including
13 wheelchair users, in other respects, which violate Plaintiff's rights to full and equal
14 access and which discriminate against Plaintiff on the basis of his disability, thus
15 wrongfully denying to Plaintiff the full and equal enjoyment of the goods, services,
16 facilities, privileges, advantages and accommodations, in violation of §§ 302 and 303
17 of the ADA. 42 USC §§ 12182 and 12183.

18 **29.** On information and belief, Defendant has continued to violate the law
19 and deny the rights of Plaintiff and other disabled persons to access this public
20 accommodation since on or before Plaintiff's encounters, as previously noted.
21 Pursuant to the ADA, § 308, 42 USC 12188 *et seq.*, Plaintiff is entitled to the
22 remedies and procedures set forth in § 204(a) of the Civil Rights Act of 1964, 42 USC
23 2000(a)-3(a), as Plaintiff is being subjected to discrimination on the basis of disability
24 in violation of the ADA or has reasonable grounds for believing that he is about to be
25 subjected to discrimination. Pursuant to § 308(a)(2), "In cases of violations of § 302(b)
26)(2)(A)(iv) and § 303(a) ... injunctive relief shall include an order to alter facilities to
27 make such facilities readily accessible to and usable by individuals with disabilities to
28 the extent required by this title."

1 **5.** Award to Plaintiff all reasonable statutory attorney fees, litigation expenses, and
2 costs of this proceeding as provided by law;

3 **6.** Award to Plaintiff prejudgment interest pursuant to California Civil 17 Code§
4 3291;

5 **7.** Grant such other and further relief as this Court may deem just and proper.
6

7
8 ASCENSION LAW GROUP, PC

9 DATE: March 27, 2017

10 /s/Pamela Tsao

11 Pamela Tsao, attorney for Plaintiff

12 JOHN HO
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury for all claims for which a jury is permitted.

ASCENSION LAW GROUP, PC

DATE: March 27, 2017

 /s/ Pamela Tsao

Pamela Tsao, attorney for Plaintiff

JOHN HO